

FILED

JUN - 5 2014

THOMAS G BRUTON
CLERK, U S DISTRICT COURTUnited States District Court
Northern District of IllinoisThomas D. Caldwell
Plaintiff

v.

Health Care Service Corp
Defendant

1:14-cv-04162

Judge Charles P. Kocoras
Magistrate Judge Susan E. Cox**COMPLAINT**

I'd like to provide additional information relevant to my claim of disability discrimination against my employer, as it will allow more visibility to the charge at hand. Additionally, I am looking to gain some insight as to what my options are moving forward, prior to filing a claim should I be granted the ability to do so.

As stated in the intake questionnaire, I was given my annual mid-year review, conducted by my Sr. Manager and newly-appointed Manager, on Wednesday, July 24, 2013. The meeting was scheduled for 10:00 AM, and expected to last approximately 30 minutes. The meeting included conversation between management and myself regarding my performance for the first 6 months of the calendar year (2013). The conversation concluded with a discussion about my availability and his emphasis on me being "unpredictable" and as a result, not being considered for promotion.

Of course, this statement took me by surprise, and when I asked for clarification, he responded by saying "well, not on this team". I went on to explain that we had discussed my chronic medical illness 3 months earlier, when he approached me about my attendance and insisted that it was becoming a distraction to the team. As I explained to him once again (as I did 3 months prior), my attendance due to my medical condition was justified based on legal backing (approved FMLA for serious medical condition), but did not impact ANY project that was assigned to me in 2013, and the prior years that I had approved FMLA. He responded by saying that me being "unpredictable" with regard to attendance and my illness was not something that he would ingest nor would consider for promotion within the team. He also stated that he was under the impression that my illness was temporary, and would be handled in such a way that my medical condition would no longer be a factor. I understood that to mean that once I am predictable, then I would be considered for promotion within the current team.

I am concerned with this situation, as I have been a model employee for over 15 years, and have performed all duties that were ever assigned to me. I have been in my current position for well over 5 years, and have had several team members who have far less experience than I get promoted to higher positions within the team that I also applied for. I am also uneasy about the statement made of me being "unpredictable" and that this is grounds for me not being considered for advancement within the team. I feel as if this thought was evident this manager when I was passed over for promotion opportunities, but never discussed until now. I have never used my illness to overshadow any job duties or responsibilities that were given to me since I was diagnosed, and I am disappointed that I have not been given an opportunity for advancement, even though I am more than qualified for the positions I was passed over for.

Additionally, my role and level of business responsibility have grown significantly since I was added to the team over a year ago, and I believe that this fact and the quality of my work warranted an opportunity for a promotion. My current position is Business Analyst II; however, for the last few years I have been performing all of the duties of a Business Analyst III and Business Analyst IV without having the job title or, of course, being paid commensurate with it.

As outlined in my original charge, I was once again told by my management team that my "unpredictability" with my attendance was the reason why I would not be considered a new position posted for the department. When I applied for an open position (4 new positions were posted by the department on 8/19/2013), I was invited by my current team lead to have a discussion about the position being sought. In the meeting (which took place on 10/10/2013), I was asked what my intent is with my career moving forward, and what personal goals I have established for myself regarding my career at Blue Cross and Blue Shield of IL.

When I inquired for additional information to better understand her statement, my team lead proceeded by informing me that the position was not available to me because I continue to show signs of not being reliable to the department from an attendance perspective, and as a result, I would not be considered for the Business Analyst III position recently posted. Management stated that there could be a perception within the division of which I am employed at BCBS IL that I am not a reliable employee, and as a result, I may not be considered for other positions that are being posted outside of my current team. When I stated – as I did so before during the original meeting that prompted the existing charge – that my attendance was covered under a legal entity (FMLA) covered by the company, and that it has in no way proved to be a negative reflection on the work performance of projects assigned to me, I was told that the FMLA presented a challenge to the department in that it prevented leadership from assigning me projects that may have proved to warrant an opportunity for promotion. I reiterated that my current role involves assignments that represent the responsibility of a Business Analyst III and IV, to which it was acknowledged. However, the concern with the FMLA was brought back to the surface of the conversation.

During the discussion, it was also suggested that I should consider taking considerable time off of work (Short Term Disability) to manage my health, and that this approach would possibly change the perception among leadership within my current department and division, and could ultimately prove beneficial in obtaining the promotion that I am currently seeking. The conversation concluded with a statement by management that my career and the path I choose is

strictly up to me, and if I do not want to remain in the current role that I am in, that I must change the perception and figure out another way to be more visible and reliable to the company without leaving any doubt as to my predictability.

Following the meeting with management, I received an email from HR Staffing that I am not being considered for the position, as the hiring manager has found other candidates who skills match more closely to the position being posted. I did not get an opportunity to interview for the position, which would have validated my skills and business knowledge, thus proving my qualifications to be considered.

On October 24, 2013, during our internal team meeting, it was brought to the group's attention that 2 of the 4 open positions had been successfully filled (Business Analyst I and Business Analyst II), and that the remaining position of Business Analyst I is being considered by an external candidate. However, when one of my peers inquired about the Business Analyst III position that was posted, management stated that the position was going to be downsized to a Business Analyst II due to interviews that did not result in a candidate being selected. Again, I was not given an opportunity to interview for the position, although I am highly qualified, and I am not comfortable with this decision.

To add to my concern, when I originally applied for the Business Analyst IV position (3rd Quarter, 2012), I was informed by my Sr. Manager, John Zotalis, that it wouldn't make any financial sense to apply and accept a position 2 or more levels higher than my current position (Business Analyst II) because I would not be receiving a pay increase for a "double jump". However, my current team lead was promoted by John Zotalis (his recommendation), resulting in her getting a "double jump" from a level 17 to a level 19. So, I'm confused as to why I was questioned by John, when in fact, the same thing applied to the promotion for my team lead.

I believe that I have been discriminated against, based on my disability, and possibly other factors that deals specifically with favoritism and personal dislike. Since being added to the team in April, 2012, I have experienced emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character or reputation, injury to credit standing, and additional loss of health. I am asking for your assistance with filing a complaint against my employer based on the information provided, and help me to determine next steps to seek an effective outcome from this traumatic experience.

- Emotional Pain and Suffering/Mental Anguish – Since applying for several positions, both internally and divisionally, I have not been successful with obtaining an interview, although my experience with each posted position was valid. These rejections have led to personal embarrassment, as my peers were well aware of my intentions, having provided countless levels of support by recommending me for promotional opportunities to management, only to be informed that I wouldn't be considered even though I was well qualified for several positions. After inquiring about the last position to which I applied, I was informed that "there is a perception within the division that I am not dependable or reliable enough to promote." This false information directly impacts my character and professionalism, as I have been a victim of slander.

I was also told that because of my unpredictable nature, I would not be assigned projects that will provide opportunities for career advancement. I facilitated a marketing strategy on behalf of a co-worker (level 18 salary) who was out on vacation. In doing so, I created the marketing flyer and championed the campaign to promote our brand to our internal HCSC customers, without any project guidance. As a result, I received a small monetary award, while my co-worker received a much larger recognition for her role with the marketing strategy. This was embarrassing as well, as my peers were inquiring as to why I was not included in the recognition, since I played such a larger role, but was excluded.

Since I made the decision to cancel my optional "1 on 1" career development sessions with management, my opportunities to promote within the team appeared to have become more difficult. Management also made it increasingly clear that those who chose not to take advantage of the optional bi-weekly sessions would risk career building opportunities that they could take full advantage of, especially those that were made available within the existing team, and other external opportunities management would promote on behalf of the employees.

- Loss of Future Earning Capacity – As a result of my discrimination, I have suffered lost earning capacity in the future by limiting my ability to increase my wage-earning power throughout the rest of my life. This charge is evident in the on-going non-promotion actions, and the negative impact on my professional reputation due to "unpredictability" statements being made throughout the division. Not only am I being denied an opportunity to advance internally, but I am not being considered for an opportunity to interview within the division, which seeks candidates whose qualifications reflect my experience. Having been given the opportunity to promote, my work life expectancy would be larger than what it is today, and I will continue to experience larger pay increases based on my anticipated work like expected career path.
- Inconvenience – Since being approved for FMLA, management has made it difficult to seek reasonable accommodations by either micromanaging my time while at work, or by limiting the amount of requests being approved. I am no longer comfortable with requesting any corporate sponsored support, such as working remotely, as it is either denied or scrutinized by management, citing my FMLA and visibility in the office.

Additionally, other time management efforts that are offered are not provided to me as an option, such as Flex Time (although certain co-workers take advantage of this perk on a weekly basis). As a result, I was forced to re-locate my physical training closer to work, which impacted my lunch schedule and commute home after work, as my time had to be adjusted for later travels. I have missed many required doctor's visits, both for primary care and cancer follow ups. I've also missed much needed appointments for blood work, as I fear that management will continue to frown and perceive me as being ill, not worthy of taking a chance on.

- Loss of Enjoyment of Life / Consortium – Since being added to the current team (April, 2012), I have been emotionally scarred, abused, and uncertain about my career. The

stress has greatly affected my lifestyle, as I have not been engaged with any social activities involving my children, including band concerts, basketball games, and family outings that were evident each and every weekend. Additionally, my sexual relationship with my wife has been greatly reduced, and as a result, has caused a huge strain in our marriage. I no longer have the strength or drive to visit external family or friends outside of work, as my motivation for an active lifestyle has dwindled. This mental anguish has negatively my family.

- Additional Loss of Health – Since being moved to the new team, I have missed several required doctor's appointments (both primary care and specialists for cancer care), for fear that my character and reputation at work will continue to be affected. I have also experienced longer episodes of hypertension, requiring additional medication, and I have now been diagnosed with Type 2 diabetes, of which I also take medication. To assist in maintaining some form of energy to support my personal and professional responsibilities, I often consume energy drinks to maintain stamina. However, I do experience side effects such as nausea, headaches, and chronic fatigue, once my day comes to an end.

I'm asking for Defendant to pay all court costs & filing fees

R Caldwell

6-5-14